

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER UTILITIES, INC., FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE WATER SERVICES TO)
THIRTY-ONE PARCELS OF LAND LOCATED IN) PSC DOCKET NO. 04-CPCN-14
THE DEVELOPMENT OF WEST BEACH,) (WEST BEACH, SUSSEX COUNTY)
DAGSBORO HUNDRED, SUSSEX COUNTY,)
DELAWARE (FILED JULY 14, 2004))

ORDER NO. 6464

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE PUBLIC WATER UTILITY SERVICES**

This 31st day of August, 2004, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. Tidewater Utilities, Inc. ("Tidewater" or the "Applicant"), is a water utility providing water services for public use that is subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On July 14, 2004, the Applicant filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water services to thirty-one parcels of land located in the "West Beach" development in Dagsboro Hundred, Sussex County, Delaware ("Proposed Service Area"), as specifically described by the parcels' tax identification numbers set forth in the Application.

2. The Application includes petitions signed by the majority of the landowners within the Proposed Service Area, and evidence

that the required Commission notice of the Application was sent via certified mail to all landowners within the Proposed Service Area. The notice explained each landowner's opportunity to object, to request a hearing, and to "opt-out," that is, to exclude the landowner's property from the Proposed Service Area. Pursuant to 26 Del. C. § 203C, in March 2004, Tidewater sent by certified mail the required notice to all landowners of record. On July 14, 2004, the Commission received and docketed the Application.

3. Staff directed the Applicant to publish a Commission approved notice of the Application in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the date the notice was published, which occurred on July 28, 2004 for this Application.

4. The Commission received a letter dated April 1, 2004 from Joseph and Ann Marie Lynsky, owners of two parcels identified in the Application as 1-37-7-68 and 1-37-7-69, requesting to "opt-out" or have their properties removed from the Proposed Service Area. Stephen and Monica Parisi, owners of parcel 1-34-7-59, also sent an "opt-out" request dated March 30, 2004, for their parcel. The Commission did not receive any request for a hearing, nor any objection to, the Application.

II. SUMMARY OF THE EVIDENCE

5. The record in this matter consists of the Application, including Applicant's request that the Commission proceed in this

matter under the informal fact-finding procedures set forth in 29 Del.

C. § 10123 (¶ 3). In addition, the Application includes:

- (i) petitions signed by the majority of landowners within the Proposed Service Area (¶ 1(d));
- (ii) copies of the United States Postal Service's forms verifying that the Applicant sent, via certified mail, a Commission approved notice of the Application to all landowners within the Proposed Service Area (Application ¶ 5);
- (iii) the County tax identification numbers of the parcels in the Proposed Service Area (Application ¶ 6);
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area and tax maps locating all the parcels (Application ¶ 7);
- (v) the Applicant's statement that its expansion of service to the parcels in the Proposed Service Area will comply with the water pressure requirements of 26 Del. C. § 403(a)&(b), and is not barred by any of the restrictions set forth in 26 Del. C. § 403(c) (Application ¶ 8 (a)-(d));

6. The record also contains:

- (i) affidavits of publication of the public notice of the Application on July 28, 2004 in the Delaware State News and in The News Journal newspapers;
- (ii) Staff's correspondence to representatives of the Office of Drinking Water of the Division of Public Health, the Office of the State Fire Marshal, and the Department of Natural Resources and Environmental Control in which Staff requested receiving by August 2, 2004 any written comments on the Application;
- (iii) letters dated July 27, 2004 and August 2, 2004, from the Office of Drinking Water of the Division of Public Health and the Office of the State Fire Marshal,

respectively, reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;

- (iv) printed e-mail correspondence date July 20, 2004 from the Department of Natural Resources and Environmental Control also indicating that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (v) Staff's August 30, 2004 memorandum of its investigation and its recommendation that the Commission approve the Application and issue a CPCN for the Proposed Service Area, as modified by the two "opt-out" letters, which act to remove the three parcels from the Proposed Service Area. Staff reports that, based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN; and
- (vi) the March 30, 2004 and April 1, 2004 letters from Monica and Stephen Parisi and from Joseph and Ann Marie Lynskey, respectively, providing notice of their decision to "opt-out," or remove their particular properties from the Proposed Service Area.

7. Finally, the record does not contain any evidence that any person objects to the application or requests a hearing.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

8. The Commission concludes it has jurisdiction to grant a CPCN permitting a water utility to expand its operations and facilities if the water utility satisfies the legal and factual requirements. The Commission finds that Applicant operates a water system for public use and, consequently, is a water utility. The Commission further finds that Applicant has satisfied the legal and factual requirements for a CPCN in its Application for issuance of a

CPCN to serve the Proposed Service Area, as amended by the removal of the properties subject to their owner's "opt-out."

9. The evidence shows that the Applicant obtained the consent of the majority of owners of the property within the Proposed Service Area in compliance of 26 Del. C. § 203C(e)(1)(b). The record also reflects that the Applicant sent by certified mail a Commission approved notice of its Application to all owners of parcels within the Proposed Service Area in compliance with Commission regulations. Furthermore, the record reflects that the Commission received no objection to, nor a request for a hearing on this application. Finally, the Applicant satisfied the legal requirements by submitting a statement that the Applicant will continue to meet the water pressure requirements for its existing customers, and that it is not subject to any regulatory Order or finding pertaining to the quality of its service to existing customers which would preclude it from expanding its operations or facilities.

10. The Commission received "opt-out" notices from the owners of three parcels, and this notice removes the parcels from the Proposed Service Area.

11. The record also contains the Commission Staff's independent review of the Application, and Staff, based upon its investigation, recommends approval because Staff did not discover that the Applicant is currently subject to any Commission finding that the utility is unwilling or unable to provide adequate and reliable water services to its existing customers.

12. In summary, the Applicant submitted the necessary proof required by the provisions of 26 Del. C. §§ 203C(e)(1), 203C(e)(1) b., & 203C(e)(3) (2002 Supp.), which the Commission's Staff reviewed and found to be accurate. The Commission also finds no reason that the Applicant is not entitled to a CPCN under the provisions of either 26 Del. C. §§ 203C(f) or 203C(i) (2001 Supp.). Since the Applicant has satisfied the statute's requirements, the Commission shall issue a CPCN permitting the Applicant to expand its operations to provide water utility services to the parcels identified in Exhibit "A" hereto, which is the Proposed Service Area except for the three parcels owned by the landowners who notified the Commission of their decision to remove or "opt-out" the parcels from the Proposed Service Area.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 203C(e) (2002 Supp.), Tidewater Utilities, Inc.'s, application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket Number 04-CPCN-14, is hereby approved, as amended to reflect the "opt-out" of three parcel owners as specifically described in Exhibit "B" to this Order, and a CPCN is granted to Tidewater Utilities, Inc., to serve the Proposed Service Area located in West Beach, Dagsboro Hundred, Sussex County, Delaware, as specifically identified by the tax map parcel numbers set forth in Exhibit "A" to this Order.

2. That Tidewater Utilities, Inc., shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may

become applicable, to any matter involving water utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

**APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

**DEVELOPMENT OF WEST BEACH
DAGSBORO HUNDRED
SUSSEX COUNTY, DELAWARE**

SUSSEX COUNTY TAX MAP PARCELS NOS.

1-34-7-51	1-34-7-67
1-34-7-52	1-34-7-70
1-34-7-53	1-34-7-71
1-34-7-54	1-34-7-72
1-34-7-55	1-34-7-73
1-34-7-57	1-34-7-74
1-34-7-58	1-34-7-75
1-34-7-60	1-34-7-76
1-34-7-61	1-34-7-78.01
1-34-7-62	1-34-7-78.02
1-34-7-63	1-34-7-78.03
1-34-7-64	1-34-7-78.06
1-34-7-65	1-34-7-78.07
1-34-7-66	1-34-7-78.08

E X H I B I T "B"

"OPT-OUT" PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

DEVELOPMENT OF WEST BEACH
DAGSBORO HUNDRED
SUSSEX COUNTY, DELAWARE

SUSSEX COUNTY TAX MAP PARCELS NOS.

1-34-7-59

1-37-7-68

1-37-7-69